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FISCAL IMPACT REPORT

ORIGINAL DATE 2/08/07

SPONSOR Gardner LAST UPDATED _____ HB 747

SHORT TITLE Personal Responsibility in Food Consumption SB _____

ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB 85
Relates to SB 26

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
Public Education Department (PED)

SUMMARY

Synopsis of Bill

House Bill 747 attempts to protect food manufacturers, producers, packers, distributors, carriers, holders, sellers, marketers or advertisers from civil liability arising from claims arising out of weight gain, obesity, a health condition associated with weight gain or obesity or other generally known condition allegedly caused by or allegedly likely to result from the long-term consumption of food. The bill seeks to prevent "Frivolous Lawsuits" by providing that the food industry would not be subject to civil liability arising from such claims.

The bill excludes from its protection causes of action alleging misbranding or adulteration of food, or violations of laws applicable to food, as long as the violation was knowing and willful and the injury was proximately caused by the violation. In cases alleging a violation of law, the bill sets forth detailed pleading requirements.

The bill also provides for a stay of discovery and all other proceedings while a motion to dismiss is pending. It would require a party to treat a request for production of documents during the pendency of such a stay as a continuing request.

SIGNIFICANT ISSUES

According to the AGO, the bill attempts to set forth pleading requirements and to govern discovery and motion practice in the New Mexico courts. It also appears to be an attempt to restrict causes of action for the consequences of food consumption. Normally those subjects are exclusively within the purview of the courts. Legislative attempts to govern judicial practice and procedure may conflict with Article VI Section 1 of the New Mexico Constitution which vests judicial power in the courts.

OTHER SUBSTANTIVE ISSUES

The Public Education Department identifies the following issues with this bill.

1. Given that the bill eliminates negligence as a legal theory when someone seeks to claim long-term consumption of food as having caused weight gain or other health injury, substituting a willful and knowing proof, perhaps the bill should be amended to impose strict liability if a person prevails in proving such a case.
2. Section 3, Page 2 of the bill does not define “long-term consumption of food,” which is the cornerstone to assessing liability under this bill. The bill distinguishes a single instance of consumption (which *is not* regulated by this bill) from what it describes as the cumulative effect of consumption (which *is* regulated by this bill).
3. Section 4, Page 3, Lines 3 and 4 refer to Section “21 U.S.C.A. 321(f)”, which is a subsection of a federal law. Article IV, Section 18 of the New Mexico Constitution advises against incorporating a law by reference except for federal tax laws. The referenced federal law contains a definition of “food” that could easily be included in the bill.
4. Section 8, Page 5, Lines 16 - 19 of the bill make the bill applicable to all cases filed on or after the effective date of the Act. Should this bill become law, any pending cases alleging legal theories covered by this bill could not constitutionally be considered to be within the scope of the new law because Article IV, Section 34 of the New Mexico Constitution provides that, “No act of the legislature shall affect the right or remedy of either party, or change the rules of evidence or procedure, *in any pending case.*”

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 85 duplicates House Bill 747. Senate Bill 26 contains many duplicate provisions.

ALTERNATIVES

The legislature could confer immunity from liability on the food service industry for certain specific injuries caused by food consumption, as opposed to seeking to regulate assertion of certain claims characterized as “frivolous”.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Members of the public would still have a cause of action against the food industry based upon theories of negligence or even violations of implied or actual warranties.

EO/csd